WP(C) 93/2002
BEFORE
THE HON'BLE MR JUSTICE B K SHARMA

Heard Mr. A. K. Goswami, learned Sr. counsel and S.C., K.A.A.C, assisted by Mr. Banik, learned S.C., K.A.A.C. Also heard Mr. H.K Deka, learned Sr. counsel for the petitioner.

The petitioner, a Lower Primary School teacher being aggrieved by the termination of his service on ground of gross negligence of his duty, has invoked the writ jurisdiction of this Court.

The petitioner was first appointed as L.P. School teacher on 27.01.86. His appointment order was issued by the Secretary, Primary Education Board, Karbi Anglong Autonomous District Council, Diphu. Eventually he became the head Pandit of the L.P. School in which he had served.

The petitioner was placed under suspension by order dated 01.07.97 and the same was issued pending drawl of the departmental proceeding. He was issued with charge sheet on 16.10.97 containing the following charges:

1) That while you were regularly irregular since August/96 in your school duty. You are therefore charged with.
2) That your irregularity made the irregular lesion of the learning students and hampered their academic progress of education.
3) That you were not informed to any concerning authority regarding your leave of absent, its shown your negligence and disobedience of the authority. You are therefore charged with.

The petitioner was directed to submit his written statement in defence within 15 days from the date of receipt of the charge sheet which he accordingly submitted on 31.10.97. It categorically denied all the charges along with written statement of defence. He also submitted 14 documents in support of his defence.

Although the petitioner was placed under suspension by the aforesaid order dated 01.07.97, he was not provided with the subsistence allowance till the order dated 11.08.99 was issued by the Primary Education Officer, Karbi Anglong Autonomous Council. By the said order the petitioner was provided with 30% subsistence allowance w.e.f. the date of suspension. Prior to that the petitioner made a representation on 09.04.99 urging for payment of subsistence allowance indicating as to how in absence of subsistence allowance he along with his family members was suffering. Thus it is seen that it was more then two years after placing the petitioner under suspension he was provided with subsistence allowance. Apart from the delay in providing subsistence allowance to the petitioner by more than two years, he was also not paid the full amount of subsistence allowance, but was paid only 30% of the salary. FR 53 provides for payment of subsistence allowance to a Govt. servant placed under suspension. Initially the Govt. servant under suspension is to be provided with 50% of the salary and thereafter same is required to be enhanced to 75%. However, in the instant case, the petitioner was not provided with subsistence allowance for long more than two years and thereafter was provided with only 30%. The Apex Court in the case of Cpt. M. Paul Anthony vs. Bharat Gold Mines reported in AIR 1999 SC 1416 took a strong notice of the fact that the delinquent office involved in the said case was not paid subsistence allowance during the pendency of the departmental proceeding. As in the said case, it is also not the case of the respondents in the instant case that the petitioner had any other source of income. Apart from other grounds involved in the said case towards interfering with the order of dismissal from service, the Apex Court also took notice of the fact that the delinquent officer was not provided with the subsistence allowance and the said fact is one of the grounds towards interference with the order dismissal from service.

The petitioner in his written statement of defence submitted on 31.10.97 categorically denied all the charges. As noticed above, his written statement of defence was accompanied by as many as 14 documents. It is the specific case of the petitioner that the respondents do not comply with the requirements of Rule-9 of th

e Assam Services (Discipline and Appeal) Rules, 1964. It is also the specific ca se of the petitioner that he was not furnished with the copy of the enquiry repo rt before imposing the extreme penalty of discharge from service. Further ground urged in the writ petition is that the order of discharge having been passed by the authority lower than the appointing authority, same is not sustainable in l aw being violative of Article 311 of the Constitution of India. Procedural irreg ularity in conducting the departmental proceeding has also been indicated by the petitioner.

The respondents have not chosen filing of any counter affidavit. Learned S.C., K arbi Anglong Autonomous Council was requested to obtain instruction in the matte r and to produce the departmental proceeding file. He has been furnished with le tter dated 08.02.07 by the District Primary Education Officer, K.A.A.C., Dihpu i ntimating that the proceeding file is not traceable. However, he has been furni shed with the copy of the enquiry report and some other documents which are all photo copies.

The initial report was submitted on 23.03.2000 and on a bare perusal of the same , it is seen that there was no enquiry worth the name. There is no indication i n the report that any witness and/or examination during the enquiry proceeding. The enquiry report itself reveals that the methodology adopted by the Enquiry Of ficer was to visit the school and to have consultation with the local people. Th ey were asked about the purported irregularity committed by the petitioner and o n the basis of their information the Enquiry Officer returned the finding of gui lt against the petitioner. The people who were examined were not the cited witne ss and they were examined by the Enquiry Officer visiting the same along with on e Shri Jaising Ingti whose identity has not been disclosed. The petitioner was n ot provided with any particular to cross examined the people whose information w ere relied upon by the Enquiry Officer. Adding insult to the injury, the petitio ner was also not furnished with the copy of the enquiry report enabling him to m ake representation against the same.

Mr. Deka, learned Sr. counsel representing the petitioner pointing out the above irregularity of the Enquiry proceeding has further submitted that the charges l evelled against the petitioner are all vague and indefinite. Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 requires the disciplinary authorit y to framed the definite charges on the basis of the allegations on which the en quiry is proposed to be held. On a bare perusal of the three charges levelled ag ainst the petitioner will be seen that the charges are all indefinite and vague. While framing the charges against the petitioner no material particulars were d isclosed as to on what basis the charges were levelled against the petitioner. T he charges also did not accompany the list of witnesses and documents which is m andatory requirement as per Rule 9 (2) of the aforesaid Rules of 1964.

The documents produced by Mr. Banik, learned S.C., K.A.A.C. did not indicate tha t there was any examination of any witnesses, be it from the side of disciplinar y authority or from the side of the petitioner. There was also nothing to show t hat the defence statement of the petitioner was recorded in the enquiry proceedi ng. In fact, it is the definite case of the petitioner that there was no enquiry worth the name and everything was done behind his back. When the enquiry report itself reveals that no enquiry proceeding as envisaged in the rules had been co nducted, the authority could not imposed the extreme penalty to the petitioner d ischarging him from service on the basis of the said bifocal enquiry. Apart from the above, the order of discharge dated 09.10.01 also does not indicate that th e petitioner was discharged from service pursuant to the departmental proceeding . In the impugned order there is no indication of the departmental proceeding wh ich was initiated against the petitioner. He was simply discharged from service stating that such discharge was due to gross negligence of duty. If the impugned order was passed on the basis of the aforesaid departmental proceeding, same is not sustainable in law and if the same was issued irrespective of the departmen tal proceeding then also same is not sustainable in law being violative of Arti cle 311 of the Constitution of India as well as the provisions of the Assam Serv ices (Discipline and Appeal) Rules, 1964.

In view of the above, I have no hesitation to set aside and quashed the impugned

order of discharge dated 09.10.01. The petitioner shall be deemed to be in service all through out. He shall be entitled to 50% of the back wages for the period during which he remained out of employment, i.e. from 09.10.01 till such time he is reinstated in service by issuing appropriate order by the respondents which shall be done forthwith.
Writ petition stands disposed of.

JUDGE
Kborah